SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2000—Land Resource Management; General

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

Subpart 2094—Special Resource Values; Shore Space

AUTHORITY: 43 U.S.C. 1740; 43 U.S.C. 1201.

Subpart 2091—Segregation and Opening of Lands

SOURCE: 52 FR 12175, Apr. 15, 1987, unless otherwise noted.

§ 2091.0–1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of title 43 covering opening and closing of public lands.

§ 2091.0–3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) and the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*).

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993]

§ 2091.0–5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) *Land* or *public lands* means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Mineral laws* means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) *Public lands records* means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) *Opening* means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) *Opening order* means an order issued by the Secretary or the authorized officer and published in the FEDERAL REGISTER that describes the

lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) *Public land laws* means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) *Revocation* means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) *Secretary* means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the *Secretary*.

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law:

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the FEDERAL REGISTER under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2–1 Segregation.

The publication of a Notice of Realty Action in the FEDERAL REGISTER segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869–4), for a period of 18 months (See part 2740 and subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See part 2710).

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993]

§ 2091.2–2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2–1 of this title (See part 2740); or

(2) As of the date specified in an opening order published in the FEDERAL REGISTER; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

[52 FR 12175, Apr. 15, 1987, as amended at 58 FR 60917, Nov. 18, 1993]

§ 2091.3 Segregation and opening resulting from a proposal or application.

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1–2 and 36 CFR 254.6).

(b) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See subparts 2621 and 2622)

(c) The filing of an application and publication of the notice of the filing of an application in the FEDERAL REGISTER for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211–213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See part 2640 and subpart 2911)

[52 FR 12175, Apr. 15, 1987; 52 FR 13563, Apr. 23, 1987, as amended at 58 FR 60917, Nov. 18, 1993]

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(c) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(d) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title. (See 43 CFR 2201.9(b))

[58 FR 60917, Nov. 18, 1993]

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4–1 Segregation and opening: Desert-land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening. (See parts 2520 and 2530).

§ 2091.4–2 Segregation and opening: Airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See part 2640 and subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See part 2640 and subpart 2911).

§ 2091.4–3 Segregation and opening: Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the FEDERAL REGISTER that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5–1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the FEDERAL REGISTER of a notice of an application or proposal for withdrawal, as provided in subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the FEDERAL REGISTER of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the publication in the FEDERAL REGISTER of a Public Land Order effecting the withdrawal in whole or in part;

(3) Upon the publication in the FEDERAL REGISTER of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the FEDERAL REGISTER of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5–2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the FEDERAL REGISTER, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5–1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5–1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5–1 of this title.

§ 2091.5–3 Segregative effect and opening: Emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the FEDERAL REGISTER of a notice of a withdrawal application or proposal.

§ 2091.5–4 Segregative effect and opening: Water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24 of the Federal Power Act. (See subpart 2320) Mining claims may be located on such lands under procedures in subpart 3730 of this title. These lands are opened by publication in the FEDERAL REGISTER of an opening order specifying the extent, date and time of opening.

§ 2091.5–5 Segregative effect and opening: Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

§ 2091.5–6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the

withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the FEDERAL REGISTER a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the FEDERAL REGISTER an opening order so specifying.

§ 2091.6 Opening of withdrawn lands: General.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the FEDERAL REGISTER of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the FEDERAL REGISTER of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the FEDERAL REGISTER as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7–1 Segregative effect and opening: Classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869–4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411–18) are segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7–1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2740 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2740 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

[52 FR 12175, Apr. 15, 1987; 52 FR 36575, Sept. 30, 1987]

§ 2091.7–2 Segregative effect and opening: Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening or upon issuance of a patent or other document of conveyance,

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9–1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by

Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), are covered by part 2650 of this title.

§ 2091.9–2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by subpart 2627 of this title.

§ 2091.9–3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a–316o) are covered by part 4200 of this title.

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

AUTHORITY: R.S. 2478; sec. 32, 41 Stat. 450; 43 U.S.C. 1201, 30 U.S.C. 189.

SOURCE: 35 FR 9536, June 13, 1970, unless otherwise noted.

EFFECTIVE DATE NOTE: At 62 FR 51376, Oct. 1, 1997, subpart 2093 was removed, effective Oct. 31, 1997.

§ 2093.0–3 Authority.

(a) Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186) and the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States, for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with parts 1840 and 1850 of this chapter.

§ 2093.0–5 Definitions.

As used in §§ 2093.0–3 to 2093.0–7 inclusive, a mineral claim is *prior* where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided*, That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 372 *et seq.*) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 2093.0–6 Notations required.

(a) *On notice of allowance.* Whenever the mineral claim is *prior*, the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

> This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

(b) *On final certificate.* (1) Whenever a nonmineral application, which is affected by the notation described in paragraph (a) of this section, proceeds to issuance of patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a *prior*, mineral claim, such final certificate and patent will indicate that they are subject to the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124).

(2) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of

section 29, Act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a *prior* mineral claim.

§ 2093.0–7 Compensation for damages.

In any case where there is no *prior* mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

§ 2093.1 Surface rights of nonmineral entrymen.

§ 2093.1–1 Act of March 3, 1909.

(a) The Act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) protects persons who in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein.

(b) [Reserved]

§ 2093.1–2 Election to take patent with reservation to United States of the coal deposits.

All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in § 2093.1–3 (a) and (b).

§ 2093.1–3 Procedures.

(a) *Where final proof has not been submitted.* (1) Authorized officers will promptly advise each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the Act of March 3, 1909.

(2) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(3) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(4) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

(b) *When final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant

shall be entitled to patent without reservation.

§ 2093.2 Agricultural entries on coal lands.

§ 2093.2–1 Acts of June 22, 1910, and April 30, 1912.

(a) Section 1 of the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), provides that the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, the desert land law, and to withdrawal under the Act approved June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the Act approved February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), entitled ''An act to provide for an enlarged homestead.'' The Act of February 19, 1909, was amended by the Act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(b) Section 2 of the Act (36 Stat. 584; 30 U.S.C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(c) The Act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the Act of June 22, 1910.

CROSS REFERENCE: See parts 2510, 2520, and 2620 for additional information on this subject.

§ 2093.2–2 Lands on which entries may be made.

(a) The Act of June 22, 1910 applies to unreserved public lands in the United States, exclusive of the State of Alaska, which have been withdrawn as coal lands and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

(b) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910.

§ 2093.2–3 Procedures.

(a) *Applications.* (1) The last proviso to section 3 of the Act of June 22, 1910 (36 Stat. 584; 30 U.S.C. 85) provides that nothing in the Act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(2) Entries and selections under the provisions of the Act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the authorized officer, the following:

Application made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910 (36 Stat. 583).

(b) *Hearing.* Except in the case of those who present applications under section 2 of the Act (36 Stat. 584; 30 U.S.C. 84), the authorized officer will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. If upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be allowed. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the Act.

§ 2093.2–4 Patent with reservation of coal deposits; disposal of coal deposits.

There will be incorporated in patents issued to nonmineral claimants under this Act the following:

> Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 22, 1910 (36 Stat. 583).

§ 2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.

§ 2093.3–1 Acts of July 17, 1914, and March 4, 1933.

(a) Section 1 of the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121), as amended, authorizes the appropriation, location, selection, entry or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and sodium and sulphur under 30 U.S.C. 124, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made.

(b) The term *person* used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L.D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the Act (38 Stat. 509; 30 U.S.C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), lands withdrawn, classified, or reported as valuable for sodium and/or sulphur are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provisions, limitations and conditions of the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), sulphur lands being limited to the States of Louisiana and New Mexico, pursuant

to the Act of July 16, 1932 (47 Stat. 701; 30 U.S.C. 271, 276).

(Interprets or applies sec. 1, 36 Stat. 583, sec. 1, 38 Stat. 509, as amended; 138; 30 U.S.C. 83, 121)

§ 2093.3–2 Lands to which applicable.

The Act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the State of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special Acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general Act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general Act, July 17, 1914, will be treated as within the scope of the latter Act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general Act.

§ 2093.3–3 Procedures.

(a) *General.* The Act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 2093.1 to 2093.2 may be followed, so far as applicable, in matters of practice and procedure.

(b) *Notations on applications and in orders of withdrawal.* (1) All applications to locate, select, enter, or purchase lands under the Act of July 17, 1914, before being accepted and filed by the authorized officer, must have written, stamped, or printed upon their face the following:

Application made in accordance with, and subject to the provisions and reservations of the Act of July 17, 1914 (38 Stat. 509).

(2) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this Act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the Act of July 17, 1914.

(c) *Notice to entryman; action by entryman.* (1) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that, if a hearing is ordered, the burden of proof will be upon him, and also that, if he shall fail to take one of the actions indicated, his entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States.

(2) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for a mineral reservation unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral

lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U.S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will notify the entryman of the mineral classification and that a hearing will be ordered if he manifests disagreement with the classification within a reasonable period. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also that, if he shall fail to make answer within the time allowed, the entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil or gas to the United States.

(d) *Applications to disprove classification of land; hearing thereon.* (1) (i) The proviso to section 2 of the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

(ii) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the Act (38 Stat. 509; 30 U.S.C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the authorized officer and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the Act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(iii) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be allowed.

(iv) If the application be denied the applicant may, within 30 days from notice of such denial, apply to the land office for a hearing to disprove the classification. When a hearing is applied for, the authorized officer will proceed therewith under parts 1840 and 1850 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(v) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(2) (i) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(ii) Claimants to whom this provision is applicable may, therefore, file in the proper office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification. If the application be denied, the claimant will be allowed 30 days from notice of such denial within which to make application to the office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the authorized officer will proceed therewith under parts 1840 and 1850 of this chapter.

(e) *Burden of proof.* (1) Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123) as

supplemented by the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(2) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (39 L.D. 201).)

§ 2093.3–4 Patents.

(a) *Patent with reservation.* Under section 3 of the Act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123), any person who shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.

(b) *Application for patent.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the Act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

(c) *Reservations in patents.* There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509).

§ 2093.3–5 Disposition of reserved deposits; protection of surface claimant.

The Act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be ''subject to disposal by the United States only as shall be hereafter expressly directed by law.'' Provisions are made in the Act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.

§ 2093.4 Entries on coal, oil, and gas lands in Alaska.

§ 2093.4–1 Acts of March 8, 1922, and May 17, 1906, as amended.

(a) The Act of March 8, 1922 (42 Stat. 415), as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 376, 377), referred to

in §§ 2094.4–1 to 2093.4–3 as ''the Act of 1922,'' provides that:

(1) In Alaska, homestead, including soldiers' additional homestead, homesite, headquarters site, and trade and manufacturing site claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits or that may be valuable for the coal, oil, or gas contained therein, and which are not otherwise reserved or withdrawn;

(2) Such claims initiated in good faith may be perfected under the appropriate public land laws and, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same; and

(3) Should it be discovered at any time prior to the issuance of a final certificate on any claim initiated for unreserved lands in Alaska that the lands are coal, oil, or gas in character, the patent issued on such entry shall contain the reservation referred to in paragraph (a)(2) of this section.

(b) The Act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), permits, subject to the provisions of the Act of 1922, homestead allotments to Indians, Leuts, and Eskimos of vacant, unappropriated, and unreserved lands in Alaska that may be valuable for coal, oil, or gas deposits and the Act of August 17, 1961 (75 Stat. 384), permits the Secretary of the Interior to sell under the provisions of section 2455 of the Revised Statutes (43 U.S.C. 1171), as amended, lands in Alaska known to contain workable coal, oil, or gas deposits, or that may be valuable for the coal, oil, or gas contained therein, and which are otherwise subject to sale under said section 2455, as amended, upon the condition that the patent issued to the purchaser thereof shall contain the reservation required by section 2 of the Act of 1922. (See part 2710.)

(c) Section 2 of the Act of 1922 provides:

(1) The coal, oil, and gas deposits reserved under the act shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal;

(2) Any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times (after the issuance of, and pursuant to, a lease or permit therefor) to enter upon the lands as provided by the act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting;

(3) Any person who has acquired from the United States the coal, oil or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(d) The Act of 1922 extends to Alaska the principles of the Acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), June 22, 1910 (36 Stat. 583; 30 U.S.C. 83–85), and July 17, 1914 (38 Stat. 509; 30 U.S.C. 121–123), which, among other things, govern agricultural entries on coal, oil, or gas lands in States other than Alaska. The general instructions under these acts relating to the reservation of coal, oil, or gas to the United States as set forth in this subpart will, therefore, be followed in matters of practice and procedure.

§ 2093.4–2 Rights of prior mineral permittees or lessees.

If prior to the date of the initiation of a claim that is subject to the provisions of the Act of 1922, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application

for or offer of such a lease or permit, the land will be subject to the right of such prior mineral permittee or lessee, or of such prior applicant for or offeror of a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the entryman, allottee, or patentee for crop and improvement damages resulting from such mineral activity.

§ 2093.4–3 Obligations of subsequent mineral permittees or lessees.

(a) Any coal permit applicant or noncompetitive oil and gas lease offeror whose application or offer was filed subsequent to the date of the initiation of a claim that is subject to the provisions of the Act of 1922 must file with the authorized officer of the proper office a waiver from, or a consent of, the claimant or a bond or undertaking on forms approved by the Director, for coal applicants and for oil and gas offerors for the payment of all damages to the crops and improvements on the lands caused by the prospecting.

(b) [Reserved]

§ 2093.5 Disposition of minerals reserved to the U.S. Government.

§ 2093.5–1 Act of December 29, 1916.

(a) *Reservation of rights.* (1) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(2) There will be incorporated in patents issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the Act of December 29, 1916 (39 Stat. 862).

Subpart 2094—Special Resource Values; Shore Space

AUTHORITY: R.S. 2478, secs. 4, 5, 69 Stat. 444; 43 U.S.C. 1201, 48 U.S.C. 462 note.

SOURCE: 35 FR 9540, June 13, 1970, unless otherwise noted.

§ 2094.0–3 Authority.

Section 1 of the Act of May 14, 1898 (30 Stat. 409) as amended by the Acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the Act of May 14, 1898, as amended by the Acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2094.0–5 Definitions.

The term *navigable waters* is defined in section 2 of the Act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark.

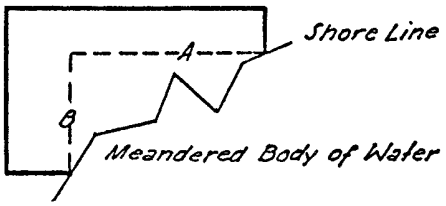
§ 2094.1 Methods of measuring; restrictions.

(a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency

would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line *A* or line *B*, whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 2094.2 Waiver of 160-rod limitation.

(a) The Act of June 5, 1920 (41 Stat. 1059; 48 U.S.C. 372) provides that the Secretary of the Interior in his discretion, may upon application to enter or otherwise, waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing, and wharf purposes. The act does not authorize the waiver of the 80-rod restriction, mentioned in § 2094.0–3.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

Group 2100—Acquisitions

PART 2110—GIFTS

Subpart 2110—Gifts; General

Sec.
2110.0–1 Purpose.
2110.0–3 Authority.

Subpart 2111—Procedures

2111.1 Offer to convey.
2111.1–1 Place of offering.
2111.1–2 Designation of authority and description of property.
2111.1–3 Statement of ownership encumbrances.
2111.2 Acceptance of offer.
2111.3 Deed of conveyance.
2111.4 Status of lands.

AUTHORITY: Sec. 2, 48 Stat. 1270, R.S. 2478, as amended, sec. 8, 48 Stat. 1272, as amended; 43 U.S.C. 315a, 1201, 315g.

Subpart 2110—Gifts; General

§ 2110.0–1 Purpose.

The Secretary of the Interior may accept as a gift, lands, with or without improvements thereon, with or without limitations or conditions as to the future use and disposition thereof, in fee simple or any interest less than fee, where possession of such land or interest will promote the purposes of a grazing district or facilitate the administration or contribute to the improvement, management, use or protection of public lands and their resources. The authority of the Secretary is discretionary and acceptance of offers rests,